

§ 981.481

§ 981.481 Interest and late payment charges.

(a) Pursuant to § 981.481, the Board shall impose an interest charge on any handler whose assessment payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 30 days of the invoice date shown on the handler's statement. The interest charge shall be a rate of one and one half percent per month and shall be applied to the unpaid assessment balance for the number of days all or any part of the unpaid balance is delinquent beyond the 30 day payment period.

(b) In addition to the interest charge specified in paragraph (a) of this section, the Board shall impose a late payment charge on any handler whose payment has not been received in the Board's office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The late payment charge shall be 10 percent of the unpaid balance.

[61 FR 64603, Dec. 6, 1996]

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Order Regulating Handling

DEFINITIONS

- Sec.
982.1 Secretary.
982.2 Act.
982.3 Person.
982.4 Hazelnuts.
982.5 Area of production.
982.6 Grower.
982.7 To handle.
982.8 Handler.
982.11 Pack.
982.12 Merchantable hazelnuts.
982.13 Substandard hazelnuts.
982.14 Restricted hazelnuts.
982.15 Inshell handler carryover.
982.16 Inshell trade acquisitions.
982.17 Marketing year.
982.18 Board.
982.19 Disappearance.
982.20 Part and subpart.

HAZELNUT CONTROL BOARD

- 982.30 Establishment and membership.
982.31 Grower districts.
982.32 Initial members and nomination of successor members.

7 CFR Ch. IX (1–1–14 Edition)

- 982.33 Selection and term of office.
982.34 Qualification.
982.35 Vacancy.
982.36 Alternates.
982.37 Procedure.
982.38 Powers.
982.39 Duties.

MARKETING POLICY

- 982.40 Marketing policy and volume regulation.
982.41 Free and restricted percentages.

GRADE AND SIZE REGULATION

- 982.45 Establishment of grade and size regulations.
982.46 Inspection and certification.

CONTROL OF DISTRIBUTION

- 982.50 Restricted obligation.
982.51 Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts.
982.52 Disposition of restricted hazelnuts.
982.53 Substandard hazelnuts.
982.54 Deferment of restricted obligation.
982.55 Exchange of certified merchantable hazelnuts withheld.
982.56 Interhandler transfers.
982.57 Exemptions.

MARKET DEVELOPMENT

- 982.58 Research, promotion, and market development.

EXPENSES AND ASSESSMENTS

- 982.60 Expenses.
982.61 Assessments.
982.62 Accounting.
982.63 Contributions.

RECORDS AND REPORTS

- 982.64 Creditable promotion and advertising reports.
982.65 Carryover reports.
982.66 Shipment reports.
982.67 Reports of disposition of restricted hazelnuts.
982.68 Other reports.
982.69 Verification of reports.
982.70 Confidential information.
982.71 Records.

MISCELLANEOUS PROVISIONS

- 982.80 Right of the Secretary.
982.81 Personal liability.
982.82 Separability.
982.83 Derogation.
982.84 Duration of immunities.
982.85 Agents.
982.86 Effective time, termination or suspension.
982.87 Effect of termination or amendment.
982.88 Amendments.

Agricultural Marketing Service, USDA

§ 982.12

Subpart—Grade and Size Regulation

982.101 Grade requirements for shelled hazelnuts.

Subpart—Free and Restricted Percentages

982.254 Free and restricted percentages—2006–2007 marketing year.

982.255 Free and restricted percentages—2007–2008 marketing year.

Subpart—Assessment Rates

982.340 Assessment rate.

Subpart—Administrative Rules and Regulations

982.446 Inspection documentation.

982.450 Application of restricted obligation.

982.452 Disposition of restricted hazelnuts.

982.453 Disposition of substandard hazelnuts.

982.454 Sureties acceptable to the Board.

982.455 Exchange of certified merchantable hazelnuts withheld.

982.456 Interhandler transfers.

982.460 Transfer of excess restricted credits.

982.461 Late payment and interest charges.

982.466 Reports of inshell hazelnuts handled, shelled and withheld.

982.467 Report of receipts and dispositions of hazelnuts grown outside the United States.

982.468 Report of hazelnut receipts, disposition, and inventory.

982.471 Records.

AUTHORITY: 7 U.S.C. 601–674.

SOURCE: 24 FR 6185, Aug. 1, 1959, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

EDITORIAL NOTE: Nomenclature changes to part 982 appear at 61 FR 17559, Apr. 22, 1996.

Subpart—Order Regulating Handling

DEFINITIONS

§ 982.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 982.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Mar-

keting Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*; 48 Stat. 31, as amended).

§ 982.3 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 982.4 Hazelnuts.

Hazelnuts means hazelnuts or filberts produced in the States of Oregon and Washington from trees of the genus *Corylus*.

[61 FR 17559, Apr. 22, 1996]

§ 982.5 Area of production.

Area of production means the States of Oregon and Washington.

§ 982.6 Grower.

Grower is synonymous with *producer* and means any person engaged, in a proprietary capacity, in the commercial production of hazelnuts.

§ 982.7 To handle.

To handle means to sell, consign, transport or ship (except as a common carrier of hazelnuts owned by another person), or in any other way to put hazelnuts, inshell or shelled, into the channels of trade either within the area of production or from such area to points outside thereof: *Provided*, That sales or deliveries by growers to handlers within the area of production or authorized disposition of restricted hazelnuts and substandard hazelnuts shall not be considered as handling.

§ 982.8 Handler.

Handler means any person who handles hazelnuts.

§ 982.11 Pack.

Pack means a specific commercial classification according to size, internal quality, and external appearance and condition of hazelnuts packed in accordance with any of the pack specifications prescribed pursuant to § 982.45.

§ 982.12 Merchantable hazelnuts.

Merchantable hazelnuts means inshell hazelnuts that meet the grade and size regulations in effect pursuant to

§ 982.13

§ 982.45 and are likely to be available for handling as inshell hazelnuts.

§ 982.13 Substandard hazelnuts.

Substandard hazelnuts means hazelnuts, inshell or shelled, that do not meet the minimum standards effective pursuant to § 982.45.

§ 982.14 Restricted hazelnuts.

Restricted hazelnuts means inshell hazelnuts withheld in satisfaction of a restricted obligation.

§ 982.15 Inshell handler carryover.

Inshell handler carryover as of any given date means all inshell hazelnuts (except restricted hazelnuts) wherever located then held by handlers or for their accounts, whether or not sold, including certified merchantable hazelnuts and the estimated merchantable content of those uncertified hazelnuts then held by handlers which are intended for handling as inshell hazelnuts.

§ 982.16 Inshell trade acquisitions.

Inshell trade acquisitions means the quantity of inshell hazelnuts acquired by the trade from all handlers during a marketing year for distribution in the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary.

[61 FR 17559, Apr. 22, 1996]

§ 982.17 Marketing year.

Marketing year means the 12 months from July 1 to the following June 30, both inclusive, or such other period of time as may be recommended by the Board and established by the Secretary.

[51 FR 29546, Aug. 19, 1986]

§ 982.18 Board.

Board means the Hazelnut Marketing Board established pursuant to § 982.30.

[46 FR 26038, May 11, 1981]

§ 982.19 Disappearance.

Disappearance means the difference between orchard-run production and the available supply of merchantable

7 CFR Ch. IX (1-1-14 Edition)

hazelnuts and merchantable equivalent of shelled hazelnuts.

[46 FR 26038, May 11, 1981]

§ 982.20 Part and subpart.

Part means the order, as amended, regulating the handling of hazelnuts grown in Oregon and Washington, and all rules, regulations, and supplementary orders issued thereunder. This order, as amended, regulating the handling of hazelnuts grown in Oregon and Washington shall be a *subpart* of such part.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and further redesignated at 46 FR 26038, May 11, 1981]

HAZELNUT CONTROL BOARD

§ 982.30 Establishment and membership.

(a) There is hereby established a Hazelnut Marketing Board consisting of 10 members, each of whom shall have an alternate member, to administer the terms and provisions of this part. Each member and alternate shall meet the same eligibility qualifications. The 10 member positions shall be allocated as follows:

(b) Four of the members shall represent handlers, as follows:

(1) One member shall be nominated by the handler who handled the largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(2) One member shall be nominated by the handler who handled the second largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(3) One member shall be nominated by the handler who handled the third largest volume of hazelnuts during the two marketing years preceding the marketing year in which nominations are made;

(4) The fourth handler member shall be nominated by and represent all other handlers.

(c) Five members shall represent growers and shall be nominated for the districts designated in or established pursuant to § 982.31. One grower member shall represent each of the five

Agricultural Marketing Service, USDA

§ 982.32

grower districts unless changes are made pursuant to § 982.31(b).

(d) One member shall be a public member who is neither a grower nor a handler.

(e) The Secretary, or the Board with the approval of the Secretary, may revise the handler representation on the Board if the Board ceases to be representative of the industry.

[51 FR 29546, Aug. 19, 1986, as amended at 61 FR 17559, Apr. 22, 1996]

§ 982.31 Grower districts.

(a) For the purpose of nominating grower members and alternate members, the following districts within the production area are hereby established:

(1) District 1—The State of Washington, and Clackamas and Multnomah Counties in Oregon.

(2) District 2—Marion and Polk Counties in Oregon.

(3) District 3—Linn, Lane, and Benton Counties in Oregon.

(4) District 4—Yamhill County in Oregon.

(5) District 5—All other Oregon counties within the production area.

(b) The Secretary, upon the recommendation of the Board, may reestablish districts within the production area and may reapportion grower membership among the various districts: *Provided*, That in recommending any such changes, the Board shall give consideration to (1) the relative importance of production in each district and the number of growers in each district; (2) the geographic location of districts as they would affect the efficiency of administering this part; and (3) other relevant factors.

[51 FR 29547, Aug. 19, 1986]

§ 982.32 Initial members and nomination of successor members.

(a) Members and alternate members of the Board serving immediately prior to the effective date of this amended subpart shall continue to serve on the Board until their respective successors have been selected.

(b) Nominations for successor handler members and alternate members specified in § 982.30(b) (1) through (3) shall be made by the largest, second largest, and third largest handler de-

termined according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each such handler during the two marketing years preceding the marketing year in which nominations are made.

(c) Nominations for successor handler member and alternate handler member positions specified in § 982.30(b)(4) shall be made by the handlers in that category by mail ballot. All votes cast shall be weighted according to the tonnage of certified merchantable hazelnuts and, when shelled hazelnut grade and size regulations are in effect, the inshell equivalent of certified shelled hazelnuts (computed to the nearest whole ton) recorded by the Board as handled by each handler during the two marketing years preceding the marketing year in which nominations are made. If less than one ton is recorded for any such handler, the vote shall be weighted as one ton. Voting will be by position, and each eligible handler can vote for a member and an alternate member. The person receiving the highest number of weighted votes for each position shall be the nominee for that respective position.

(d) For the purposes of nominating and voting for handler members and alternates, the tonnage of hazelnuts shall be credited to the handler responsible under the order for the payment of assessments of those hazelnuts.

(e) Nominees to successor grower member and alternate member positions shall be submitted to the Secretary after the Board conducts balloting of growers, or officers or employees of growers, in the grower districts according to the following procedure: Names of the candidates to be shown on the ballot for a particular district may be submitted to the Board on petitions signed by not less than 10 growers on record with the Board as growers being in that district; each grower may sign only as many petitions as there are persons to be nominated within that district. If such petitions fail to result in submission of at least two names for a district, the

§ 982.33

7 CFR Ch. IX (1-1-14 Edition)

Board shall request County Agricultural Extension Agents in that district to recommend one or more eligible growers to be included on the ballot. Ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all growers who are on record with the Board. The person receiving the highest number of votes shall be the member nominee for that district, and the person receiving the second highest number of votes shall be the alternate member. The Board shall recommend one candidate in case of a tie vote.

(f) Nominations received in the foregoing manner by the Board for all handler and grower member and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the Board to be pertinent or requested by the Secretary. If nominations are not made within the time and manner specified in this subpart, the Secretary may, without regard to nominations, select the Board members and alternates on the basis of the representation provided for in this subpart.

(g) The members of the Board shall nominate the public member and alternate public member at the first meeting following the selection of members for a new term of office.

(h) The Board with the approval of the Secretary shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

[51 FR 29547, Aug. 19, 1986, as amended at 61 FR 17559, Apr. 22, 1996]

§ 982.33 Selection and term of office.

(a) *Selection.* Members and their respective alternates shall be selected by the Secretary from nominees submitted by the Board or from among other qualified persons.

(b) *Term of office.* The term of office of Board members and their alternates shall be for two years beginning on July 1 and ending on June 30, but they shall serve until their respective suc-

cessors are selected and have qualified: *Provided*, That beginning with the 1996-97 marketing year, no member shall serve more than three consecutive two-year terms as member and no alternate member shall serve more than three consecutive two-year terms as alternate unless specifically exempted by the Secretary. Nomination elections for all Board grower and handler member and alternate positions shall be held every two years.

(c) The members on the Board shall continue to serve until the new members and alternates have been selected and have qualified.

[51 FR 29547, Aug. 19, 1986, as amended at 61 FR 17559, Apr. 22, 1996]

§ 982.34 Qualification.

(a) Any person prior to selection as a member or an alternate member of the Board shall qualify by filing with the Secretary a written acceptance of willingness to serve on the Board.

(b) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, employee, or agent of a grower in the district for which nominated.

(c) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer, employee, or agent of a handler.

(d) Any member or alternate member who at the time of selection was a member (or employed by or an agent of a member) of the group which nominated that person shall, upon ceasing to be such, become disqualified to serve further and that position shall be deemed vacant. In the event any grower member or alternate member of the Board handles hazelnuts produced by other growers or becomes an employee or agent of a handler, that person shall be disqualified to continue to serve on the Board in that capacity.

(e) No person nominated to serve as a public member or alternate member shall have a financial interest in any hazelnut growing or handling operation.

Agricultural Marketing Service, USDA

§ 982.39

(f) The Board, with the approval of the Secretary, may issue rules and regulations covering matters of qualifications for members or alternate members.

[51 FR 29547, Aug. 19, 1986]

§ 982.35 Vacancy.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member or alternate of the Board, a successor for his unexpired term shall be nominated and selected in the manner provided in §§ 982.32 and 982.33, so far as applicable, unless selection is deemed unnecessary by the Secretary.

§ 982.36 Alternates.

An alternate for a member of the Board shall act in the place of the member during such member's absence or, upon the member's death, removal, resignation, or disqualification, until a successor for that member's term has been selected and has qualified.

[51 FR 29548, Aug. 19, 1986]

§ 982.37 Procedure.

(a) Seven members of the Board shall constitute a quorum at an assembled meeting of the Board, and any action of the Board shall require the concurring vote of at least six members. At any assembled meeting, all votes shall be cast in person.

(b) The Board may vote by mail, telephone, telegraph, or other means of communication: *Provided*, That any votes (except mail votes) so cast shall be confirmed at the next regularly scheduled meeting. When any proposition is submitted for voting by any such method, its adoption shall require 10 concurring votes.

(c) The members of the Board and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided*, That the Board may request the attendance of one or more alternates not acting as members at any meeting of the Board, and such alternates may be allowed their necessary expenses.

[26 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 51 FR 29548, Aug. 19, 1986; 61 FR 17559, Apr. 22, 1996]

§ 982.38 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

§ 982.39 Duties.

The Board shall have among others the following duties:

(a) To select from among its members such officers and adopt rules or bylaws for the conduct of its meetings as it deems advisable;

(b) To act as intermediary between the Secretary and any handler or grower;

(c) To keep minute books and records which will clearly reflect all of its acts and transactions, and such books and records shall be available for examination by the Secretary at any time;

(d) To furnish to the Secretary such available information as he may request;

(e) To appoint such employees as it deems necessary and determine the salaries, define the duties and fix the bonds of such employees;

(f) To cause the books of the Board to be audited by one or more public accountants approved by the Board at least once for each marketing year and at such other times as the Board deems necessary or as the Secretary may request, and to file with the Secretary reports of all audits made;

(g) To investigate the growing, shipping and marketing conditions with respect to hazelnuts, and assemble data in connection therewith;

(h) To give the Secretary the same notice of the meetings of the Board as is given to its members; and

(i) To furnish to the Secretary a report of the proceedings of each meeting of the Board held for the purpose of

§ 982.40

7 CFR Ch. IX (1–1–14 Edition)

making marketing policy recommendations.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26039, May 11, 1981; 61 FR 17559, Apr. 22, 1996]

MARKETING POLICY

§ 982.40 Marketing policy and volume regulation.

(a) *General.* As provided in this section, prior to September 20 of each marketing year, the Board may hold meetings for the purpose of computing its marketing policy for that year and shall do so for the purpose of submitting any recommendations on its policy to the Secretary. The Board may designate one of its employees to compute and announce the preliminary computed free and restricted percentages.

(b) *Inshell trade demand.* If the Board determines that volume regulation would tend to effectuate the declared policy of the act, it shall compute and announce an inshell trade demand for that year prior to September 20. The inshell trade demand shall equal the average of the preceding three years' trade acquisitions of inshell hazelnuts: *Provided*, That the Board may increase such average by no more than 25 percent if market conditions justify such an increase. If the trade acquisitions during any or all of these years were abnormal because of crop or marketing conditions, the Board may use a prior year or years in determining the three-year average.

(c) *Inshell allocation—(1) Preliminary computed percentages.* Prior to September 20 of a marketing year, the Board shall compute and announce preliminary computed free and restricted percentages for that year, to release 80 percent of the inshell trade demand for that year. The preliminary computed free percentage shall be computed by multiplying that trade demand, adjusted by the declared carryin, by 80 percent, and by dividing that amount by the Board's estimate of orchard-run production less the average disappearance during the preceding three years, plus the undeclared carryin. The difference between 100 percent and the preliminary free percentage shall be the preliminary computed restricted percentage. At the same time, the

Board may announce the portion of the restricted supply that may be shelled or exported, and the remainder of that supply to be disposed of in outlets approved by the Board pursuant to § 982.52.

(2) *Interim final and final percentages.* On or before November 15, the Board shall meet to recommend to the Secretary the interim final and final free and restricted percentages, including the portion of the restricted supply that may be shelled or exported. The interim final percentages shall release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. The final free and restricted percentages may release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell hazelnuts for desirable carryout. If the trade acquisitions during any or all of these years were abnormal, the Board may use a prior year or years in determining this three-year average. The final free and restricted percentages shall become effective 30 days prior to the end of the marketing year, or earlier as may be recommended by the Board and approved by the Secretary. The recommendations to the Secretary shall include the following:

(i) The estimated tonnage of merchantable hazelnuts expected to be produced during the marketing year.

(ii) The estimated tonnage of inshell hazelnuts held by handlers on the first day of the marketing year which may be available for handling as inshell hazelnuts thereafter.

(iii) Any other pertinent factors bearing on the marketing of hazelnuts during the marketing year.

Whenever the Secretary finds, on the basis of the recommendation of the Board or other available information that, to establish the interim final and final free and restricted percentages would tend to effectuate the declared policy of the act, the Secretary shall establish such percentages.

(d) *Grade and size regulations.* Prior to September 20, the Board may consider grade and size regulations in effect and may recommend modifications thereof to the Secretary.

(e) *Revision of marketing policy.* At any time prior to February 15 of the

Agricultural Marketing Service, USDA

§ 982.46

marketing year, the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided*, That in no event shall any such recommendation provide for free and restricted percentages based on an inshell trade demand which is more than 125 percent of the average of the preceding three years' trade acquisitions computed pursuant to paragraph (b) of this section for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers, who during the preceding marketing year handled at least 10 percent of all hazelnuts handled, the Board shall meet to determine whether the marketing policy should be revised.

[51 FR 29548, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40 shall apply to all merchantable hazelnuts handled during the current marketing year. Until the preliminary computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

[51 FR 29548, Aug. 19, 1986]

GRADE AND SIZE REGULATION

§ 982.45 Establishment of grade and size regulations.

(a) *Minimum standards.* No handler shall handle any inshell or shelled hazelnuts unless such inshell hazelnuts meet requirements of Oregon No. 1 grade and medium size (as defined in the Oregon Grade Standards Hazelnuts In Shell), and such shelled hazelnuts meet such requirements as are established by the Secretary on the basis of a recommendation of the Board, except as may be otherwise provided in § 982.57. These minimum standards may be modified by the Secretary on the basis of a recommendation of the Board or other information whenever he finds that such modification would tend to effectuate the declared policy of the act. Such minimum standards and the

provisions of this part relating to the administration thereof shall continue in effect irrespective of whether the season average price of hazelnuts is above the parity level specified in section 2(1) of the act.

(b) *Additional grade and size regulations.* When the season average price of hazelnuts is not determined to be above parity, the Secretary may establish additional grade and size regulations for inshell hazelnuts in the form of a more restrictive minimum standard than that specified in paragraph (a) of this section, or pack specifications as to grades and sizes that may be handled, if he finds, on the basis of a recommendation of the Board or other information, that such regulations would tend to effectuate the declared policy of the act.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 37 FR 589, Jan. 14, 1972]

§ 982.46 Inspection and certification.

(a) Before or upon handling any hazelnuts, or before any inshell or shelled hazelnuts are credited (under § 982.50 or § 982.51) in satisfaction of a restricted obligation, each handler shall, at his own expense, cause such hazelnuts to be inspected and certified by the Federal-State Inspection Service as meeting the then effective grade and size regulations or, if inshell or shelled hazelnuts are withheld under § 982.51, the applicable requirements specified in that section. The handler obtaining such inspection of hazelnuts shall cause a copy of the certificate issued by such inspection service applicable to such hazelnuts to be furnished to the Board.

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

(c) Whenever the Board determines that the length of time in storage and conditions of storage of any lot of certified merchantable hazelnuts have been or are such as to normally cause

§ 982.50

7 CFR Ch. IX (1-1-14 Edition)

deterioration, it may require that such lot of hazelnuts be reinspected at the handler's expense prior to handling.

[40 FR 53227, Nov. 17, 1975, as amended at 61 FR 17560, Apr. 22, 1996]

CONTROL OF DISTRIBUTION

§ 982.50 Restricted obligation.

(a) No handler shall handle inshell hazelnuts unless prior to or upon shipment thereof, he: (1) Has withheld from handling a quantity, by weight, of certified merchantable hazelnuts determined by dividing the quantity handled, or to be handled, by the applicable free percentage and multiplying the quotient by the restricted percentage; (2) has withheld from handling an equivalent quantity of creditable ungraded inshell hazelnuts under § 982.51(a); or (3) has under § 982.51(b), declared in lieu of a quantity of certified merchantable hazelnuts, under paragraph (a)(1) of this section, the equivalent quantity, by weight as determined under that section, of shelled hazelnuts certified as meeting the standards in effect for Oregon No. 1 grade for shelled hazelnuts as contained in Oregon Grade Standards for Hazelnut Kernels or such other standards as may be recommended by the Board and established by the Secretary. Any handler who intends to withhold shelled hazelnuts in satisfaction of a restricted obligation must make such declaration to the Board prior to shelling any such hazelnuts. Withholding may be temporarily deferred under the bonding provisions in § 982.54. The quantity of hazelnuts required to be withheld shall be the restricted obligation. Certified merchantable hazelnuts handled in accordance with this subpart shall be deemed to be the handler's quota fixed by the Secretary within the meaning of section 8a(5) of the Act.

(b) Inshell hazelnuts withheld by a handler in satisfaction of his restricted obligation shall not be handled and shall be held by him subject to examination by and accounting control of, the Board until disposed of pursuant to this part.

(c) A handler having certified merchantable hazelnuts which have not been handled at the end of a marketing

year may elect to have those hazelnuts bear the restricted and assessment obligations of that year or of the marketing year in which handled. The Board shall establish such procedures as are necessary to facilitate the administration of this option among handlers.

(d) Whenever the restricted percentage for a marketing year is reduced, each handler's restricted obligation shall be reduced to conform with the new restricted percentage. Any handler who, upon such reduction, is withholding restricted hazelnuts in excess of his new restricted obligation may have the excess freed from withholding by complying with such procedures as the Board may require to insure identification of the remaining hazelnuts withheld.

[40 FR 53227, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981]

§ 982.51 Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts.

(a) A handler may withhold ungraded inshell hazelnuts in lieu of certified merchantable hazelnuts in satisfaction of that handler's restricted obligations, and the weight on which credit may be received shall be the shelled hazelnut equivalent weight as inspected by the Federal-State Inspection Service multiplied by 2.5. Any lot of ungraded hazelnuts not meeting the moisture requirements for certified merchantable hazelnuts shall not be eligible for credit. All determinations as to the shelled hazelnut equivalent weight shall be made by the Federal-State Inspection Service at the handler's expense. Hazelnuts so withheld shall be subject to the applicable requirements of § 982.50. The weight of all such lots for which a handler has received credit shall be adjusted by the Board when the lots are handled or disposed of so that the creditable weight is equal to the amount of certified merchantable inshell hazelnuts or certified shelled hazelnuts that are subsequently handled or disposed of from those lots. If this adjustment causes the handler to no longer be in satisfaction of that handler's restricted obligation as required by § 982.50, the

deficiency shall be satisfied in the subsequent marketing year. If this adjustment results in a handler disposing of, in restricted outlets, a quantity in excess of that handler's restricted obligation, such excess shall not be credited to such handler's restricted obligation during the subsequent marketing year.

(b) A handler may withhold, in accordance with §982.50(a), certified shelled hazelnuts in lieu of merchantable hazelnuts in satisfaction of such handler's restricted obligation, subject to such terms and conditions as are recommended by the Board and established by the Secretary. The inshell equivalent of such hazelnuts shall be determined by multiplying the weight of the shelled hazelnuts by 2.5.

(c) The Secretary upon recommendation of the Board and other available data may modify these procedures, change the conversion factors, and specify factors for conversion for different varieties of hazelnuts.

[51 FR 29548, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

§ 982.52 Disposition of restricted hazelnuts.

Hazelnuts withheld from handling as inshell hazelnuts pursuant to §§982.50 and 982.51 may be disposed of as follows:

(a) *Shelling.* Any handler may dispose of such hazelnuts by shelling them under the direction or supervision of the Board or by delivering them to an authorized sheller. Any person who desires to become an authorized sheller in any marketing year may submit written application during such year to the Board. Such application shall be granted only upon condition that the applicant agrees:

(1) To use such restricted hazelnuts as he may receive for no purpose other than shelling;

(2) To dispose of or deliver such restricted hazelnuts, as inshell hazelnuts, to no one other than another authorized sheller;

(3) To comply fully with all laws and regulations applicable to shelling of hazelnuts; and

(4) To make such reports, certified to the Board and to the Secretary as to their correctness, as the Board may require.

(b) *Export.* Sales of certified merchantable restricted hazelnuts for shipment to destinations outside the continental United States and such other distribution areas as may be recommended by the Board and established by the Secretary shall be made only by the Board. Any handler desiring to export any part or all of that handler's certified merchantable restricted hazelnuts shall deliver to the Board the certified merchantable restricted hazelnuts to be exported, but the Board shall be obligated to sell in export only such quantities for which it may be able to find satisfactory export outlets. Any hazelnuts so delivered for export which the Board is unable to export shall be returned to the handler delivering them. Sales for export shall be made by the Board only on execution of an agreement to prevent exportation into the area designated in §982.16. A handler may be permitted to act as an agent of the Board, upon such terms and conditions as the Board may specify, in negotiating export sales, and when so acting shall be entitled to receive a selling commission as authorized by the Board. The proceeds of all export sales, after deducting all expenses actually and necessarily incurred, shall be paid to the handler whose certified merchantable restricted hazelnuts are so sold by the Board.

(c) *Other outlets.* In addition to the dispositions authorized in paragraphs (a) and (b) of this section, the Board may designate such other outlets into which such hazelnuts may be disposed which it determines are noncompetitive with normal market outlets for inshell hazelnuts. Such dispositions shall be made under the direction or supervision of the Board.

(d) *Restricted credits.* During any marketing year, handlers who dispose of a quantity of eligible hazelnuts in restricted outlets in excess of their restricted obligations, may transfer such excess credits to another handler or handlers. Upon a handler's written request to the Board during a marketing year, the Board shall transfer any or all of such excess restricted credits to such other handler or handlers that the handler may designate. The Board, with the approval of the Secretary,

§ 982.53

shall establish rules and regulations for the transfer of excess restricted credits.

[40 FR 53227, Nov. 17, 1975, as amended at 51 FR 29549, Aug. 19, 1986; 61 FR 17560, Apr. 22, 1996]

§ 982.53 Substandard hazelnuts.

The Board shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to insure that hazelnuts which do not meet the effective inshell or shelled hazelnut minimum standards do not enter normal market outlets for certified hazelnuts.

§ 982.54 Deferment of restricted obligation.

(a) *Bonding.* Compliance by any handler with the requirements of § 982.50 when restricted hazelnuts may be withheld shall be temporarily deferred to any date requested by the handler, but not later than 60 days prior to the end of the marketing year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking before beginning to handle merchantable hazelnuts during the marketing year. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to such date the handler will have fully satisfied the restricted obligation required by § 982.50, subject to any adjustment pursuant to § 982.51.

(b) *Bonding requirement.* Such bond or bonds shall, at all times during their effective period, be in such amounts that the aggregate thereof shall be no less than the total bonding value of the handler's deferred restricted obligation. The bonding value shall be the deferred restricted obligation poundage multiplied by the applicable bonding rate. The cost of such bond or bonds shall be borne by the handler filing same.

(c) *Bonding rate.* Said bonding rate shall be an amount per pound as established by the Board. Such bonding rate shall be based on the estimated value of restricted credits for the current marketing year. Until bonding rates for a marketing year are fixed, the rates in effect for the preceding mar-

7 CFR Ch. IX (1-1-14 Edition)

keting year shall continue in effect. The Board should make any necessary adjustments once such new rates are fixed.

(d) *Restricted credit purchases.* Any sums collected through default of a handler on the handler's bond shall be used by the Board to purchase restricted credits from handlers, who have such restricted credits in excess of their needs, and are willing to part with them. The Board shall at all times purchase the lowest priced restricted credits offered, and the purchases shall be made from the various handlers as nearly as practicable in proportion to the quantity of their respective offerings of the restricted credits to be purchased.

(e) *Unexpended sums.* Any unexpended sums which have been collected by the Board through default of a handler on the handler's bond, remaining in the possession of the Board at the end of a marketing year, shall be used to reimburse the Board for its expenses, including administrative and other costs incurred in the collection of such sums, and in the purchase of restricted credits as provided in paragraph (d) of this section.

(f) *Transfer of restricted credit purchases.* Restricted credits purchased as provided for in this section shall be turned over to those handlers who have defaulted on their bonds for liquidation of their restricted obligation. The quantity delivered to each handler shall be that quantity represented by sums collected through default.

(g) *Collection upon bonds.* Collection upon any defaulted bond shall be deemed a satisfaction of the restricted obligation represented by the collection.

[40 FR 53228, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981; 51 FR 29549, Aug. 19, 1986; 61 FR 17560, Apr. 22, 1996]

§ 982.55 Exchange of certified merchantable hazelnuts withheld.

Any handler who has withheld from handling certified merchantable hazelnuts pursuant to the requirements of § 982.50 may exchange therefor an equal quantity, by weight, of other certified merchantable hazelnuts. Any such exchange shall be made under the direction or supervision of the Board.

Agricultural Marketing Service, USDA

§ 982.58

§ 982.56 Interhandler transfers.

Within the area of production, interhandler transfers of hazelnuts may be made as follows:

(a) Uncertified inshell hazelnuts may be sold or delivered by one handler to another for packing or shelling, and the receiving handler shall be responsible for compliance with the regulations effective pursuant to this part with respect to such hazelnuts.

(b) Restricted hazelnuts withheld by a handler may be sold or delivered to another handler for shelling, export, or other authorized outlet subject to the disposition requirements set forth in § 982.52.

(c) Certified hazelnuts other than restricted hazelnuts may be sold or delivered by one handler to another and the transferring handler shall be responsible for compliance with the requirements effective pursuant to this part, unless specified and agreed upon in writing by both handlers that the receiving handler shall be responsible for such compliance and a copy of such agreement is furnished to the Board.

(d) The Board, with the approval of the Secretary, shall establish procedures, including necessary reports, for such transfers.

§ 982.57 Exemptions.

(a) *General.* The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards that exempt from any or all requirements pursuant to this part such quantities of hazelnuts or types of shipments as do not interfere with the volume and quality control objectives of this part, and shall require such reports, certifications, or other conditions as are necessary to ensure that such hazelnuts are handled or used only as authorized.

(b) *Sales by growers direct to consumers.* Any hazelnut grower may sell hazelnuts of such grower's own production free of the regulatory and assessment provisions of this part if such grower sells such hazelnuts in the area of production directly to end users at such grower's ranch or orchard or at roadside stands and farmers' markets. The Board, with the approval of the Secretary, may establish such rules, regulations, and safeguards and require

such reports, certifications, and other conditions, as are necessary to ensure that such hazelnuts are disposed of only as authorized. Mail order sales are not exempt sales under this part.

[51 FR 29549, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

MARKET DEVELOPMENT

§ 982.58 Research, promotion, and market development.

(a) *General.* The Board, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research, marketing research and development, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of hazelnuts. The Board may also provide for crediting the pro rata expense assessment obligations of a handler with such portion of such handler's direct expenditures for such marketing promotion including paid advertising as may be authorized. The expenses of such projects shall be paid from funds collected pursuant to § 982.61, § 982.63, or credited pursuant to paragraph (b) of this section.

(b) *Creditable expenditures.* The Board, with the approval of the Secretary, may provide for crediting all or any portion of a handler's direct expenditures for marketing promotion including paid advertising, that promotes the sale of hazelnuts, hazelnut products, or their uses. No handler shall receive credit for any allowable direct expenditures that would exceed the total of the handler's assessment obligation which is attributable to that portion of the handler's assessment designated for marketing promotion including paid advertising.

(c) *Rules and regulations.* Before any projects involving marketing promotion, including paid advertising and the crediting of the pro rata expense assessment obligation of handlers is undertaken pursuant to this section, the Secretary, after recommendation

§ 982.60

by the Board, shall prescribe appropriate rules and regulations as are necessary to effectively administer such projects.

[51 FR 29549, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

EXPENSES AND ASSESSMENTS

§ 982.60 Expenses.

The Board is authorized to incur such expenses including maintenance of an operating reserve fund as the Secretary may find are reasonable and likely to be incurred by it during each marketing year, for the maintenance and functioning of the Board and for such purposes as the Secretary may, pursuant to the provisions of this subpart, determine to be appropriate. The recommendation of the Board as to the expenses and size of the operating reserve for each such marketing year, together with all data supporting such recommendations, shall be submitted to the Secretary at the beginning of the fiscal year in connection with which such recommendation is made. The funds to cover such expenses shall be acquired by levying assessments as provided in § 982.61.

§ 982.61 Assessments.

(a) For each marketing year, the Secretary shall fix an assessment rate per pound of hazelnuts handled and withheld, including the creditable weight of ungraded restricted hazelnuts withheld pursuant to § 982.51 and, when subject to regulation pursuant to § 982.45, the inshell equivalent of shelled hazelnuts certified which are produced from other than restricted hazelnuts that will provide sufficient funds to meet the authorized expenses and reserve requirements of the Board. At any time during or after a marketing year when he determines, on the basis of a Board recommendation or other information, that a different rate is necessary, the Secretary may modify the assessment rate and the new rate shall be applicable to all such hazelnuts. Each handler shall pay to the Board on demand, assessments on all such assessable hazelnuts at the rate fixed by the Secretary, less any amounts credited pursuant to § 982.58. The Board shall impose a late payment charge on any handler who

7 CFR Ch. IX (1-1-14 Edition)

fails to pay his assessment within the time prescribed by the Board. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Board shall impose an additional charge in the form of interest on such outstanding amount. The rate of such charges shall be prescribed by the Board, with the approval of the Secretary.

(b) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the Board may accept the payment of assessments in advance, and may also borrow money for such purpose. Further, payment discounts may be authorized by the Board upon the approval of the Secretary to handlers making such advance assessment payments.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 37 FR 589, Jan. 14, 1972; 51 FR 29550, Aug. 19, 1986; 61 FR 17560, Apr. 22, 1996]

§ 982.62 Accounting.

(a) *Operating reserve.* The Board with the approval of the Secretary may establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses or such lower limits as the Board with the approval of the Secretary may establish.

(b) *Refunds.* At the end of a marketing year funds in excess of the marketing year's expenses and reserve requirements shall be refunded to handlers from whom collected and each handler's share of such excess funds shall be the amount of assessments the handler paid in excess of the handler's pro rata share of expenses of the Board. However, excess funds may be maintained and used by the Board until December 1 following the end of any such marketing year: *Provided*, That the Board shall refund to each handler upon request, or credit to the handler's account with the Board, the handler's share of such excess prior to January 1.

(c) *Termination.* Upon termination of this subpart any money remaining unexpended in possession of the Board shall be distributed in such manner as

Agricultural Marketing Service, USDA

§ 982.69

the Secretary may direct: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

[24 FR 6185, Aug. 1, 1959, as amended at 46 FR 26040, May 11, 1981]

§ 982.63 Contributions.

The Board may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 982.58. Furthermore, such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use.

[61 FR 17560, Apr. 22, 1996]

RECORDS AND REPORTS

§ 982.64 Creditable promotion and advertising reports.

Each handler shall file such reports of creditable promotion including paid advertising conducted pursuant to § 982.58 as recommended by the Board and approved by the Secretary.

[51 FR 29550, Aug. 19, 1986]

§ 982.65 Carryover reports.

As of January 1, May 1, and August 1, or such other dates as the Board may recommend and the Secretary approve, each handler shall report within 10 days to the Board the handler's inventory of inshell and shelled hazelnuts. Such reports shall be certified to the Board and the Secretary as to their accuracy and completeness and shall show, among other items, the following: (a) Certified merchantable hazelnuts on which the restricted obligation has been met; (b) merchantable hazelnuts on which the restricted obligation has not been met; (c) the merchantable equivalent of any hazelnuts intended for handling as inshell hazelnuts; and (d) restricted hazelnuts withheld.

[46 FR 26040, May 11, 1981]

§ 982.66 Shipment reports.

Each handler shall report to the Board the respective quantities of inshell and shelled hazelnuts handled by him during such periods and in such

manner as are prescribed by the Board with the approval of the Secretary.

§ 982.67 Reports of disposition of restricted hazelnuts.

(a) Each handler, before he disposes of any quantity of restricted hazelnuts held by him, shall file with the Board a report of his intention to dispose of such quantity of restricted hazelnuts. This report shall be filed not less than five days prior to the date on which the restricted hazelnuts are disposed of, unless the five-day period is expressly waived by the Board.

(b) Each handler, within 15 days after the disposition of any quantity of restricted hazelnuts, shall file with the Board a report of the actual disposition of such quantity of restricted hazelnuts. Such reports shall be certified to the Board and to the Secretary as to their correctness and accuracy.

(c) All reports required by this section shall show the quantity, pack, and location of the hazelnuts covered by such reports; the applicable handler's storage lot and inspection certificate numbers; and the disposition of the restricted hazelnuts which is intended or which has been accomplished.

§ 982.68 Other reports.

Each handler shall furnish to the Board such other reports as the Board, with the approval of the Secretary, may require to enable it to exercise its powers and to perform its duties.

§ 982.69 Verification of reports.

For the purpose of checking and verifying reports submitted by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to each handler's premises at any time during reasonable business hours and shall be permitted to inspect any hazelnuts held by such handler and all records of the handler with respect to hazelnuts held or disposed of by such handler and all records of the handler with respect to promotion and advertising activities conducted pursuant to § 982.58. Each handler shall furnish all labor necessary to facilitate such inspections as the Secretary or the Board may make

§ 982.70

of such handler's holdings of any hazelnuts. Each handler shall store hazelnuts in such manner as to facilitate inspection, and shall maintain adequate storage records which will permit accurate identification of all such hazelnuts held.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 37 FR 589, Jan. 14, 1972; 51 FR 29550, Aug. 19, 1986]

§ 982.70 Confidential information.

All reports and records furnished or submitted by handlers to the Board, which include data or information constituting a trade secret or disclosing of the trade position, financial condition, or business operations of the particular handler from whom received, shall be kept in the custody and under the control of one or more employees of the Board, and shall be disclosed to no person except the Secretary.

§ 982.71 Records.

Each handler shall maintain such records of hazelnuts received, held, and disposed of by the handler, and such records detailing such handler's promotion and advertising activities, as may be prescribed by the Board in order to perform its function under this part. Such records shall be retained and be available for examination by authorized representatives of the Board or the Secretary for a period of two years after the end of the marketing year in which the transactions occurred.

[40 FR 53228, Nov. 17, 1975, as amended at 51 FR 29550, Aug. 19, 1986]

MISCELLANEOUS PROVISIONS

§ 982.80 Right of the Secretary.

The members of the Board (including successors, alternates, or other persons selected by the Secretary), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every order, regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void except as to acts done in

7 CFR Ch. IX (1-1-14 Edition)

reliance thereon or in compliance therewith.

§ 982.81 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent or employee, except for acts of dishonesty.

§ 982.82 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 982.83 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 982.84 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 982.85 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

Agricultural Marketing Service, USDA

§ 982.87

§ 982.86 Effective time, termination or suspension.

(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in this section.

(b) *Suspension or termination.* (1) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(2) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(3) *Referendum.* The Board shall recommend to the Secretary during the first half of every 10-year period starting January 1, 1990, that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

(4) The Secretary shall terminate the provisions of this subpart at the end of any marketing year whenever the Secretary finds that such termination is favored by a majority of the producers of hazelnuts who during the preceding marketing year have been engaged in the production for marketing of hazelnuts in the States of Oregon and Washington: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such hazelnuts produced for market within said States; but such termination shall be effected only if announced 30 days or more before the end of the then current marketing year.

(5) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board,

including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant to this subpart.

(3) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section shall be subject to the same obligations imposed upon the members of the said Board and upon said joint trustees.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 46 FR 26040, May 11, 1981; 51 FR 29550, Aug. 19, 1986]

§ 982.87 Effect of termination or amendment.

(a) Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (1) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (2) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (3) affect or impair any right or remedies of the Secretary or of any other person, with respect to any such violation.

(b) All rules and regulations in this part which are in effect immediately prior to this amendment of this subpart and not inconsistent with such amendment shall continue in effect until otherwise prescribed pursuant to this subpart.

§ 982.88 Amendments.

Amendments to this subpart may be proposed, from time to time, by any person or by the Board.

Subpart—Grade and Size Regulation

§ 982.101 Grade requirements for shelled hazelnuts.

(a) Pursuant to § 982.45(a), no handler shall handle any shelled hazelnuts unless such hazelnuts meet the grade requirements for shelled hazelnuts as contained in exhibit A of this section.

(b) Pursuant to §§ 982.50(a) and 982.51(b), a handler may declare and withhold shelled hazelnuts in lieu of merchantable hazelnuts in satisfaction of the handler's restricted obligation. Shelled hazelnuts so declared and withheld shall, in lieu of the standards prescribed in § 982.50(a)(3), meet the grade requirements contained in exhibit A of this section.

EXHIBIT A

Grade Requirements for Shelled Hazelnuts

Hazelnut kernels or portions of hazelnut kernels shall meet the following requirements:

- (1) Well dried and clean;
- (2) Free from foreign material, mold, rancidity, decay or insect injury; and
- (3) Free from serious damage caused by serious shriveling, or other means.

Tolerances

In order to allow for variations incident to proper grading and handling the following tolerances, by weight, are permitted as specified:

- (1) For Foreign Material: 0.02 of one percent, for foreign material.
- (2) For Defects: Five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than the following: Two percent for mold, rancidity, decay or insect injury: *Provided*, That not more than one percent shall be for mold, rancidity, or insect injury.

Definitions

- (1) *Well dried* means that the kernels are firm and crisp, not containing more than 6 percent moisture.
- (2) *Clean* means practically free from plainly visible adhering dirt or other foreign material.
- (3) *Foreign material* means any substance other than the hazelnut kernels, or portions

of kernels. (Loose skins, pellicles or corky tissue which have become separated from the kernels shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.)

(4) *Serious damage* means any specific defect described in this section, or any equally objectionable variation of any one of these defects, or any other defects, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as serious damage.

(i) *Serious shriveling* means when the kernel is seriously shrunken, wrinkled and tough.

(ii) *Mold* means that there is a visible growth of mold either on the outside or inside of the kernel.

(iii) *Rancidity* means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(iv) *Decay* means that any portion of the kernel is decomposed.

(v) *Insect injury* means that the insect, frass or web is present, or the kernel or portion of kernel show definite evidence of insect feeding.

[47 FR 12611, Mar. 24, 1982, as amended at 48 FR 34015, July 27, 1983]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .300 through .399) and "Marketing percentage" regulations (e.g., sections .200 through .299) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Subpart—Free and Restricted Percentages

§ 982.254 Free and restricted percentages—2006–2007 marketing year.

The final free and restricted percentages for merchantable hazelnuts for the 2006–2007 marketing year shall be 8.2840 percent and 91.7160 percent, respectively.

[72 FR 2603, Jan. 22, 2007]

§ 982.255 Free and restricted percentages—2007–2008 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 2007–2008 marketing

Agricultural Marketing Service, USDA

§ 982.452

year shall be 8.1863 and 91.8137 percent, respectively.

(b) On May 1, 2008, the final free and restricted percentages for merchantable hazelnuts for the 2007–2008 marketing year shall be 9.2671 and 90.7329 percent, respectively.

[73 FR 9005, Feb. 19, 2008]

Subpart—Assessment Rates

§ 982.340 Assessment rate.

On and after July 1, 2000, an assessment rate of \$0.005 per pound is established for Oregon and Washington hazelnuts.

[65 FR 47247, Aug. 2, 2000]

Subpart—Administrative Rules and Regulations

SOURCE: 26 FR 4191, May 16, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

§ 982.446 Inspection documentation.

Pursuant to § 982.46(b), handlers are required to use the following identification on bags and cartons of 25 pounds or larger capacity which contain certified hazelnuts:

(a) The words “This Produce Inspected and Certified Per Federal Marketing Order No. 982” shall be contained within an outline of the combined States of Oregon and Washington; and

(b) This identification shall be printed on the upper right quarter of the printed side of a bag; or

(c) This identification shall be printed on the upper right quarter of one of the side panels of a carton.

[54 FR 46720, Nov. 7, 1989]

§ 982.450 Application of restricted obligation.

(a) Each handler required to withhold restricted hazelnuts pursuant to § 982.50 or § 982.51 shall hold such hazelnuts separate from all other hazelnuts and shall maintain the identity of each lot so withheld. The restricted product withheld must be reported to the Board on F/H Form 1d, Restricted Inshell Certified.

(b) Each handler making the election pursuant to § 982.50(c) in connection with certified merchantable hazelnuts which have not been handled, shall thereupon give written notification to the Board on F/H Form 4 of the particular election and of the weight and identity of the hazelnuts involved.

(c) Pursuant to § 982.50(d), a handler may withdraw from withholding restricted hazelnuts in excess of such handler's restricted obligation upon advising the Board of the weight and lot identity of the hazelnuts to be withdrawn. When the quantity of restricted hazelnuts to be withdrawn from withholding consists of a part of a lot of ungraded hazelnuts, no part of such lot shall be withdrawn unless the remainder of such lot is reinspected and meets the requirements of § 982.51. Handlers will use F/H Form 1d prior to the end of the marketing year or F/H Form 7 after the end of the marketing year, when reporting the withdrawal of restricted hazelnuts from withholding status.

[54 FR 46720, Nov. 7, 1989]

§ 982.452 Disposition of restricted hazelnuts.

(a) *Shelling.* (1) Any person desiring to shell restricted hazelnuts during a fiscal year may do so upon being designated by the Board as an authorized sheller for such year. Application for such designation shall be made in duplicate on F/H Form B and include, in addition to the conditions specified in § 982.52(a), the following: (i) The location of the applicant's shelling operation; (ii) the number of years such person has operated a hazelnut shelling plant; and (iii) the daily (8-hour) shelling capacity of the plant. Designation of an authorized sheller shall be effected by the board manager signing the application form and returning a signed copy of the form to the applicant. Each such designation shall continue in effect during the particular fiscal year so long as the authorized sheller is in compliance with the requirements and conditions pursuant to § 982.52 applicable to authorized shellers.

(2) When an authorized sheller completes the shelling of a lot of restricted hazelnuts, the sheller shall submit a

report thereon to the Board on F/H Form 7 showing:

- (i) The date shelling was completed;
- (ii) The inspection certificate or lot number;
- (iii) The quantity shelled;
- (iv) The weight of the kernels produced; and
- (v) The location where restricted hazelnuts were held immediately prior to shelling.

(b) *Exports.* Any handler who desires to act as agent of the Board in negotiating export sales of certified merchantable restricted hazelnuts may do so upon the execution of an "Export Agreement", F/H Form A, wherein the handler agrees, among other things, to negotiate such export sales at not less than such price as the Board may prescribe, and in conformity to and compliance with the other terms and conditions of the Export Agreement including those set forth in § 982.52(b).

(c) *Other authorized outlets.* Under the direction or supervision of the Board, a handler may dispose of restricted hazelnuts for charitable purposes and for promoting the consumption of hazelnuts on behalf of the hazelnut industry in general. The report required under § 982.67(b) following each such disposition shall be accompanied by a certification by the person receiving such hazelnuts from the handler that they will be used for charitable or promotional purposes, as authorized.

[26 FR 4191, May 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1960, as amended at 54 FR 46721, Nov. 7, 1989]

§ 982.453 Disposition of substandard hazelnuts.

The Board shall maintain a list of approved users who are crushers, livestock feed manufacturers, or livestock feeders, and of the locations of the facilities to which substandard hazelnuts may be shipped. Users interested in purchasing substandard hazelnuts or hazelnut waste must make prior application to the Board on F/H Form D to be included on the approved list of such users. Each handler who disposes of substandard hazelnuts to an approved user shall, upon shipment, report to the Board on F/H Form D1 the quantities disposed of or shipped. Substandard hazelnuts disposed of to an

approved user may only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. The Board may deny approval to any user application, or may remove any user from the approved list when such denial or removal is deemed necessary to ensure control over disposition of substandard hazelnuts. This may occur if the Board determines that substandard hazelnuts are not properly shipped to, or utilized at, approved facilities, in compliance with this requirement. F/H Form D includes the location and description of the disposal facilities to be used as well as a certification to the Board and the Secretary of Agriculture that the applicant will:

(a) Crush, manufacture feed, or feed to livestock such hazelnuts at the location;

(b) Use such hazelnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(c) Permit such inspection of premises and of hazelnuts received and held, and such examination of books and records covering hazelnut transactions as the Board may require;

(d) Keep a record of receipts, holdings, and use of substandard hazelnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(e) Make such reports, certified to the Board and the Secretary of Agriculture as to their correctness, as the Board with the approval of the Secretary may require.

[54 FR 24328, June 7, 1989]

§ 982.454 Sureties acceptable to the Board.

Bonds secured by cash, cashier's or certified checks, or by assets that are entirely separate and apart from the handler named in the bond may be accepted by the Board pursuant to § 982.54(a). As a condition of accepting any surety, the Board may require such financial statements or other information relating to the ability of such surety to guarantee a handler's bond as it

Agricultural Marketing Service, USDA

§ 982.466

deems necessary. Handlers are also required to submit F/H Form C to the Board to document the handler's execution of a bond.

[54 FR 46721, Nov. 7, 1989]

§ 982.455 Exchange of certified merchantable hazelnuts withheld.

Each handler desiring to exchange hazelnuts pursuant to § 982.55 shall prior thereto file a written notification with the Board setting forth for the respective quantities of hazelnuts involved in the exchange, the inspection certificate numbers, quantities, locations, and applicable lot numbers.

[54 FR 46721, Nov. 7, 1989]

§ 982.456 Interhandler transfers.

Each interhandler transfer of hazelnuts pursuant to § 982.56 (a) and (c) may be made upon notification to the Board in triplicate by the receiving handler on F/H Form 2 signed by both the transferring handler and the receiving handler which shall include the following information:

- (a) Date of transfer;
- (b) Names of the transferring and receiving handlers;
- (c) Locations between which the hazelnuts were transferred;
- (d) Whether uncertified inshell or certified merchantable;
- (e) Net weight of the hazelnuts transferred, by size and variety;
- (f) The inspection certificate, or lot number covering the hazelnuts; and
- (g) If certified merchantable, the name of the handler responsible for compliance with the applicable requirements pursuant to this part relating to such hazelnuts.

[54 FR 46721, Nov. 7, 1989]

§ 982.460 Transfer of excess restricted credits.

(a) *Notification.* Each handler having excess restricted credits who wants to transfer all or a portion thereof to another handler or handlers, may notify the Board accordingly. The Board shall make available to all handlers such information on a weekly basis.

(b) *Application.* Each handler who has excess restricted credits and desires to transfer them to another handler, may

submit such request to the Board on F/H Form 3. This form shall include:

- (1) The name and signature of the handler requesting the transfer;
- (2) The name and signature of the designated handler to whom the transfer is to be made;
- (3) The amount of excess restricted credits to be transferred; and
- (4) Such other information as may be needed by the Board to enable the Board to effect the requested transfer of the excess restricted credits.

(c) *Transfer.* The Board shall transfer the requested amount of the excess restricted credits from one handler to a designated handler upon receipt of a completed F/H Form 3 together with such information as may be required by this section.

[37 FR 3630, Feb. 18, 1972, as amended at 54 FR 46721, Nov. 7, 1989]

§ 982.461 Late payment and interest charges.

The Board shall impose a late payment charge on any handler failing to pay his assessment within 30 days of the billing date shown on the handler's assessment statement received from the Board. Such amount shall be shown on the statement as the "Assessment Due". The late payment charge shall be 5 percent of the unpaid balance of that amount. In the event the handler fails to pay the delinquent amount, including the late payment charge, within 60 days following the billing date, an additional 1 percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as assessments, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Board's office.

[38 FR 5151, Feb. 26, 1973]

§ 982.466 Reports of inshell hazelnuts handled, shelled and withheld.

Each handler shall report to the Board monthly on F/H Form 1 and F/H Forms 1a through 1e, as applicable, the quantities of inshell hazelnuts handled or withheld for restricted use and all product shelled and certified since the

§ 982.467

last report. All reports shall be submitted to include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The quantities of inshell hazelnuts handled shall be reported by size. The respective quantities of merchantable or ungraded hazelnuts withheld as restricted product shall be reported separately, and with respect to hazelnuts certified for shelling, or certified kernels withheld, the kernel weight and inshell equivalent weight shall be reported separately by size.

[54 FR 46721, Nov. 7, 1989]

§ 982.467 Report of receipts and dispositions of hazelnuts grown outside the United States.

Each handler who receives hazelnuts grown outside the United States shall report to the Board monthly on *F/H Form 1* if the receipt and disposition of such hazelnuts. All reports submitted shall include transactions through the end of each month, or other reporting periods established by the Board, and are due in the Board office on the tenth day following the end of the reporting period. The report shall include the quantity of such hazelnuts received, the country of origin for such hazelnuts, inspection certificate number, whether such hazelnuts are inshell or kernels, the disposition outlet, and shipment date of such hazelnuts. With each report, the handler shall submit copies of the applicable inspection certificates.

[67 FR 5445, Feb. 6, 2002]

§ 982.468 Report of hazelnut receipts, disposition, and inventory.

On or before January 15 and July 15, or any other date requested by the Board with the approval of the Secretary, each handler shall:

(a) Report to the Board on *F/H Form 6* such handler's receipts and disposition of inshell hazelnuts and production of hazelnut kernels during the respective preceding six-month period of July 1 to December 31, and the preceding 12-month period of July 1 to June 30; and

7 CFR Ch. IX (1–1–14 Edition)

(b) Report to the Board on *F/H Form 5* such handler's inventory of hazelnuts as of January 1 and July 1, respectively, showing the quantities of inshell hazelnuts separately in terms of certified merchantable, graded uncertified merchantable, restricted, and ungraded. The certified merchantable hazelnuts shall be reported on the basis of whether located within or outside the production area and whether or not the restricted obligation has been met.

[54 FR 46721, Nov. 7, 1989]

§ 982.471 Records.

Each handler shall maintain complete and accurate records showing the receipt, shipment and sale of all hazelnuts handled, used or otherwise disposed of and shall retain such records for the two-year period prescribed in § 982.71. Handlers shall also maintain a current record of all hazelnuts held in inventory.

[54 FR 46721, Nov. 7, 1989]

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

Subpart—Order Regulating Handling

DEFINITIONS

Sec.	
983.1	Accredited laboratory.
983.2	Act.
983.3	Affiliation.
983.4	Aflatoxin.
983.5	Aflatoxin inspection certificate.
983.6	Assessed weight.
983.7	Certified pistachios.
983.8	Committee.
983.9	Confidential data or information.
983.10	Department or USDA.
983.11	Districts.
983.12	Domestic shipments.
983.14	Handle.
983.15	Handler.
983.16	Inshell pistachios.
983.17	Inspector.
983.18	Lot.
983.20	Part and subpart.
983.21	Person.
983.22	Pistachios.
983.23	Processing.
983.24	Producer.
983.25	Production area.
983.26	Production year.
983.27	Proprietary capacity.
983.28	Secretary.